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Docket No. AO 168

UNITED STATES DEPARTMENT OF AGRICULTURE  
AGRICULTURAL MARKETING ADMINISTRATION

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U.S. Department of Agriculture

NOTICE OF HEARING WITH RESPECT TO A PROPOSED  
MARKETING AGREEMENT AND A PROPOSED ORDER  
REGULATING THE HANDLING OF MILK IN THE  
MEMPHIS, TENNESSEE, MARKETING AREA

Notice is hereby given of a hearing to be held at the Gayoso Hotel, Memphis, Tennessee, beginning at 10:00 a.m., c.w.t., June 17, 1942, with respect to a proposed marketing agreement and a proposed order regulating the handling of milk in the Memphis, Tennessee, marketing area.

This notice is given pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 1940 ed. 601 et seq.), and in accordance with the General Regulations of the Agricultural Marketing Administration, United States Department of Agriculture, as amended (6 F. R. 6570; 7 F. R. 3350).

This public hearing is for the purpose of receiving evidence with respect to a proposed marketing agreement and order submitted by the Mid-South Milk Producers' Association, the provisions of which are hereinafter set forth in detail. The proposed marketing agreement and order have not received the approval of the Secretary of Agriculture, and at the hearing evidence will be received relative to all aspects of the marketing conditions which are dealt with by the proposed marketing agreement and order. The provisions of the proposed marketing agreement and order are as follows:

Sec. 1 Definitions. (a) Terms. As used herein the following terms shall have the following meanings:

(1) The term "act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937.

(2) The term "Secretary" means the Secretary of Agriculture of the United States.

(3) The term "Memphis, Tennessee, marketing area," hereinafter called the "marketing area," means the territory within the corporate limits of the city of Memphis in the State of Tennessee.

(4) The term "person" means any individual, partnership, corporation, association, or any other business unit.

(5) The term "producer" means any person, irrespective of whether any such person is also a handler, who produces, in conformity with the applicable health regulations, milk which is received at a plant from which milk is disposed of in the marketing area. This definition shall be deemed to include any person who produces, in conformity with such health regulations, milk caused to be delivered by a cooperative association which is a handler to a plant from which no milk is disposed of in the marketing area.

(6) The term "handler" means any person who, on his own behalf or on behalf of others purchases or receives milk from producers, associations of producers, or other handlers, all or a portion of which milk is disposed of as milk, cream, or skim milk in the marketing area, and who on his own behalf, or on behalf of others, engages in such handling of milk as is in the current of interstate or foreign commerce or which directly burdens, obstructs, or affects interstate or foreign commerce in milk and its products. This definition shall be deemed to include any cooperative association with respect to the milk of any producer which it causes to be delivered to a plant from which no milk is disposed of in the marketing area, for the account of such cooperative association and for which such cooperative association collects payment: Provided, That such milk is handled on a basis which will permit the market administrator to verify the utilization of such milk in the plant at which such milk is received. This definition shall not be deemed to include any person from whom emergency milk is received.

(7) The term "market administrator" means the person designated pursuant to Sec. 2 as the agency for the administration hereof.

(8) The term "cooperative association" means any cooperative association of producers which the Secretary determines (a) to have its entire activities under the control of its members, and (b) to have full authority in the sale of milk of its members.

(9) The term "delivery period" means any calendar month.

(10) The term "base" means the quantity of milk calculated for each producer pursuant to Sec. 8.

Sec. 2 Market administrator. (a) Designation. The agency for the administration hereof shall be a market administrator, who shall be a person selected by the Secretary. Such person shall be entitled to such compensation as may be determined by, and shall be subject to removal at the discretion of, the Secretary.

(b) Powers. The market administrator shall have power:

(1) To administer the terms and provisions hereof; and

(2) To receive, investigate, and report to the Secretary complaints of violation of the terms and provisions hereof.

(c) Duties. The market administrator, in addition to the duties hereinafter described, shall:

- (1) Keep such books and records as will clearly reflect the transactions provided for herein and surrender the same to his successor or to such other person as the Secretary may designate;
- (2) Submit his books and records to examination by the Secretary at any and all times;
- (3) Furnish such information and such verified reports as the Secretary may request;
- (4) Within 45 days following the date upon which he enters upon his duties, execute and deliver to the Secretary a bond, conditioned upon the faithful performance of his duties, in an amount and with surety thereon satisfactory to the Secretary;
- (5) Publicly disclose to handlers and producers, unless otherwise directed by the Secretary, the name of any person who, within 15 days after the date upon which he is required to perform such acts, has not (a) made reports pursuant to Sec. 5 or (b) made payments pursuant to Sec. 9;
- (6) Employ and fix the compensation of such persons as may be necessary to enable him to administer the terms and provisions hereof;
- (7) Pay, out of the funds provided by Sec. 11, (a) the cost of his bond and of the bonds of such of his employees as handle funds entrusted to the market administrator, (b) his own compensation, and (c) all other expenses which will necessarily be incurred by him for the maintenance and functioning of his office and the performance of his duties; and
- (8) Promptly verify the information contained in the reports submitted by handlers.

Sec. 3 Classification of milk. (a) Milk to be classified. Milk of a producer caused to be delivered by a cooperative association which is a handler to a plant from which no milk is disposed of in the marketing area and all milk received by each handler, including milk produced by him, if any, at plants from which milk is disposed of in the marketing area, shall be classified by the market administrator in the classes set forth in paragraph (b) of this section, subject to the provisions of paragraphs (c), (d), and (e) of this section. In the classification of milk as required in paragraph (b) of this section the responsibility of each handler shall be as follows:

- (1) In establishing the classification of any milk received by a handler, the burden rests upon the handler to account for the milk and to prove to the market administrator that such milk should not be classified as Class I milk.

(2) With respect to milk, skimmed milk, or cream disposed of to another handler, the burden rests upon the handler who first received the milk to account for the milk, skimmed milk, or cream and to prove to the market administrator that such milk, skimmed milk, or cream should not be classified as Class I milk.

(b) Classes of utilization. The classes of utilization of milk shall be as follows:

(1) Class I milk shall be all milk and skim milk disposed of as milk, buttermilk, and milk drinks, whether plain or flavored, all milk disposed of as cream (for consumption as cream) and as creamed cottage cheese, and all milk not specifically accounted for as Class II milk.

(2) Class II milk shall be all milk accounted for (a) as used to produce a milk product other than those specified in Class I milk and (b) as actual plant shrinkage, not to exceed 2.0 percent of the total receipts of milk from producers including the handler's own production.

(c) Transfers of milk and cream. (1) Milk, skim milk, or cream received at a handler's plant from another handler's plant, at both of which milk is received from producers shall be allocated to Class I: Provided, That if a different allocation is agreed upon in writing between such receiving handler and such selling handler or cooperative association and is submitted to the market administrator, on or before the 5th day after the end of the delivery period, then the milk, skim milk, and cream shall be allocated according to such written agreement: And provided further, That the amount so allocated to any class shall not be greater than the amount used in that class by the receiving handler after deduction of any milk pursuant to subparagraph (2) of this paragraph.

(2) Milk, skim milk, and cream received at a plant at which milk is received from producers from a plant at which no milk is received from producers shall be allocated to Class II, except that any of this milk, skim milk, and cream in excess of the amount of Class II milk used by the receiving handler shall be allocated to Class I.

(d) Computation of milk in each class. For each delivery period the market administrator shall compute for each handler the pounds of milk in each class as defined in paragraph (b) of this section, as follows:

(1) Determine the total pounds of milk received as follows: Add into one sum (a) the pounds of milk received from producers; (b) the pounds of milk, skim milk, and cream (4.0 percent milk equivalent of cream) received from other handlers, if any; (c) the pounds of milk, skim milk, and cream (4.0 percent milk equivalent of cream) produced by such handler, if any; and (d) the pounds of milk, skim milk, and cream (4.0 percent equivalent of cream) received from any other source, if any.

(2) Determine the total pounds of butterfat received as follows:  
(a) multiply the weight of the milk received from producers by its average butterfat test; (b) multiply the weight of the milk produced by him, if any, by its average butterfat test; (c) multiply the weight of the milk or cream received from other handlers, if any, by its average butterfat test; (d) multiply the weight of the milk or cream received from other sources, if any, by its average butterfat test; and (e) add together the resulting amounts.

(3) Determine the total pounds of Class I milk as follows: (a) convert to quarts the quantity of milk and skim milk disposed of in the form of milk, buttermilk, and milk drinks, whether plain or flavored, and multiply by 2.15; (b) multiply the actual weight of each of the products disposed of as cream (for consumption as cream), and as creamed cottage cheese by its average butterfat test and add together the resulting amounts, and divide the result obtained by 4.0 percent; (c) determine the total pounds of butterfat in the products disposed of under (a) and (b) herein and if the quantity of butterfat so computed, when added to the pounds of butterfat in Class II milk, is less than the total pounds of butterfat received, an amount equal to the difference shall be divided by 4.0 percent and added to the quantity of milk determined pursuant to (a) and (b) of this subparagraph.

(4) Determine the total pounds of Class II milk as follows:  
(a) multiply the actual weight of each of the several products of Class II milk by its average butterfat test; (b) add together the resulting amounts; (c) subtract the total pounds of butterfat in Class I milk computed pursuant to subparagraph (3) (c) of this paragraph and the total pounds of butterfat in Class II milk computed pursuant to (b) of this subparagraph from the total pounds of butterfat computed pursuant to subparagraph (2) of this paragraph, which resulting quantity shall be allowed as plant shrinkage for the purpose of this paragraph (but in no event shall such plant's shrinkage exceed 2.0 percent of the total receipts of butterfat from producers by the handler), and shall be added to the result obtained in (b) of this subparagraph; and (d) divide the result obtained in (b) of this subparagraph by 4.0 percent.

(5) Determine the classification of milk received from producers as follows:

(i) Subtract from the total pounds of milk in each class the total pounds of milk, skim milk, and cream (4.0 percent milk equivalent of cream) which were received from other handlers and used in such class.

(ii) Subtract from the total pounds of Class II milk the total pounds of milk, skim milk, and cream (4.0 percent equivalent of cream) received from sources other than producers and handlers: Provided, That if the quantity of such milk, skim milk, and cream (4.0 percent equivalent of cream) received from sources other than producers and handlers is

greater than the quantity of milk used in Class II an amount equal to such difference shall be subtracted from the total pounds of Class I milk.

(iii) Subtract pro rata out of the remaining milk in each class the quantity of milk of the handler's own production.

(e) Reconciliation of utilization of milk by classes with receipts of milk from producers. (1) If the total utilization of all milk for any handler, as computed pursuant to paragraph (d) of this section, is less than the receipts of milk from producers, the market administrator shall increase the total pounds of milk in Class II for such handler by an amount equal to the difference between the receipts of milk from producers and the total utilization of milk by classes for such handler.

(2) If the total utilization of milk in the various classes for any handler, as computed pursuant to paragraph (d) of this section, is greater than the receipts of milk from producers, the market administrator shall decrease the total pounds of milk in Class II for such handler by an amount equal to the difference between the receipts of milk from producers and the total utilization of milk by classes for such handler.

Sec. 4 Minimum prices. (a) Class prices. Each handler shall pay producers at the time and in the manner set forth in Sec. 9 not less than the following prices for the respective quantities of milk in each class computed pursuant to Sec. 3:

(1) Class I milk. The price per hundred pounds for Class I milk shall be as follows:

Delivery period:	Amount dollars per hundred pounds:
July through April	\$3.50
May and June	\$3.25

(2) Class II milk. The price per hundred pounds for Class II milk shall be the price determined as follows: multiply by  $\frac{4}{5}$  the average price of 92-score butter as established in the Chicago wholesale market as reported by the United States Department of Agriculture for the delivery period during which such milk was received plus 20 percent, plus an amount per hundred pounds computed as follows: add 3-1/2 cents per hundred pounds for each full one-half cent that the price of dry skim milk for human consumption is above 5-1/2 cents per pound. For purposes of determining this adjustment the price per pound of dry skim milk to be used shall be the average of the carlot prices for dry skim milk for human consumption, f.o.b. manufacturing plant, as published by the United States Department of Agriculture for a Chicago area during the delivery period, including in such average the quotations published for any fractional part of the previous delivery period which were not published and available for the price determination of such dry skim milk for the previous delivery period.

In the event the United States Department of Agriculture does not publish carlot prices for dry skim milk for human consumption, f.o.b. manufacturing plant, the average of the carlot prices for dry skim milk for human consumption, delivered at Chicago, shall be used. In the latter event the adjustment shall be computed as follows: add 3-1/2 cents per hundred pounds for each full one-half cent that the price of dry skim milk for human consumption, delivered at Chicago, is above 7-1/2 cents per pound.

(b) Price of Class I milk for relief distribution. For Class I milk disposed of by such handler under a program approved by the Secretary for the sale or distribution of milk to low-income consumers, including persons on relief, the price shall be the Class I price for such delivery period less 46 cents.

(c) Sales outside the marketing area. The price to be paid by a handler for Class I milk disposed of outside the marketing area shall be the price for Class I milk as specified in paragraph (a) of this section.

(d) Butterfat differential to handlers. If any handler has purchased or received milk from producers containing more or less than 4.0 percent butterfat, such handler shall add or deduct, per hundredweight of milk in each class, for each one-tenth of 1 percent butterfat above or below 4.0 percent, an amount computed as follows: to the average price per pound of 92-score butter at wholesale in the Chicago market, as reported by the United States Department of Agriculture for the delivery period during which such milk was received, add 20 percent and divide the result obtained by 10.

Sec. 5 Reports of handlers. (a) Periodic reports. On or before the 5th day after the end of each delivery period, each handler who purchased or received milk from producers shall with respect to milk, skim milk, or cream which was purchased, received, or produced by such handler during such delivery period, report to the market administrator in the detail and form prescribed by the market administrator, as follows:

(1) The receipts of milk from each producer, including receipts from such handler's own production, the butterfat content and the number of days on which milk was received from each producer.

(2) The quantity of base milk received from each producer and the quantity of milk received from each producer in excess of his respective base.

(3) The receipts of milk, skim milk, and cream from handlers who purchase or receive milk from producers and the butterfat content thereof.

(4) The receipts of milk, skim milk, and cream from any other source including receipts of milk, skim milk, and cream completely processed and packaged for distribution to consumers from handlers who

purchase or receive no milk from producers and the butterfat content thereof.

(5) The respective quantities of milk which were sold, distributed, or used, including sales to other handlers for the purpose of classification pursuant to Sec. 3.

(6) The name and address of each producer from whom milk had not been received during the previous delivery period.

(7) Such other information with respect to the above as the market administrator may request.

(b) Reports of payments to producers. On or before the 20th day after the end of each delivery period, upon the request of the market administrator, each handler who purchased or received milk from producers shall submit to the market administrator his producer pay roll for such delivery period, which shall show for each producer:

(1) The total pounds of milk delivered and the average butterfat content thereof, and (2) the net amount of such handler's payments to such producer with the prices, deductions, and charges involved.

(c) Reports of handlers who receive no milk from producers. Handlers who purchase or receive no milk from producers shall report to the market administrator at such time and in such manner as the market administrator may require.

(d) Verification of reports. Each handler shall make available to the market administrator or his agent (1) all reports and facilities necessary for the verification of the information contained in the report submitted and in the accounting for the usage of all receipts in accordance with the classification of milk as set forth in Sec. 3, and (2) those facilities which are necessary for weighing, sampling, and testing of the milk of each producer.

If, in the verification of the reports of any handler made pursuant to paragraph (a) of this section, it is necessary for the market administrator to examine the records of milk, skim milk, and cream handled in a plant of the handler from which no milk is disposed of in the marketing area, such handler shall make such records available to the market administrator. If, in the verification of the reports of any handler made pursuant to paragraph (a) of this section, the market administrator finds that, subsequent to the delivery period for which the verification is being made, any milk, skim milk, or cream received during such delivery period was used in a class other than that in which it was first disposed of, such milk, skim milk, or cream shall be reclassified accordingly and the adjustments necessary to reflect the reclassified value of such milk, skim milk, or cream shall be made in the value of milk computed for such handler for the delivery period following such reclassification of milk.

Sec. 6 Handlers who are also producers. (a) No provision hereof shall apply to a handler who is also a producer and who purchases or receives no milk from producers and who sells or delivers no milk in bulk to other handlers, except that such handler shall make reports to the market administrator at such time and in such manner as the market administrator may request and shall permit the market administrator to verify such reports.

(b) All milk, skim milk, or cream sold or disposed of completely processed and packaged for distribution to consumers by a handler who purchases or receives no milk from producers to another handler who purchases or receives milk from producers shall be classified as Class I milk up to the amount of such milk, skim milk, or cream actually sold in the original package by the purchasing handler as bottled Class I milk.

Sec. 7 Determination of uniform prices to producers. (a) Computation of value of milk for each handler. For each delivery period the market administrator shall compute, subject to the provisions of Sec. 6, the value of milk of producers disposed of by each handler who purchased or received milk from producers by (1) multiplying the quantity of such milk in each class computed pursuant to Sec. 3 (d) and (e) by the price applicable pursuant to Sec. 4, and (2) adding together the resulting value of each class, and (3) deducting, if the average butterfat content of all milk received from producers is in excess of 4.0 percent, or adding, if the average butterfat content of all milk received from producers is less than 4.0 percent, the total value of the butterfat differential applicable pursuant to Sec. 9 (f).

(b) Computation and announcement of uniform prices. For each delivery period the market administrator shall compute and announce the uniform price per hundred pounds of milk in accordance with whichever of the following procedures is applicable:

(1) If for such delivery period the delivered bases of all producers, as described in Sec. 8, are in excess of the Class I sales as determined under Sec. 3 (d) and (e), the respective values of milk in all classes for each handler computed pursuant to paragraph (a) of this section shall be combined into one total; and an amount equal to the value of the Class II sales to be paid pursuant to Sec. 9 (a)(2) shall be subtracted; and the amount of cash balance in the producer-settlement fund, less the amount due handlers pursuant to Sec. 9(e) shall be added; and the resulting amount shall be paid to producers on a uniform percentage of base: Provided, That such percentage reduction shall not apply in the case of producers whose deliveries during such delivery period are not in excess of such uniform percentage of their established bases.

(2) If the Class I sales of all handlers are in excess of the total delivered bases of producers, the total respective values of milk in all classes for each handler computed pursuant to paragraph (a) of this section shall be combined into one total; and an amount resulting from the total

in excess of Class I price multiplied by the total delivered bases, less the amount due handlers pursuant to Sec. 9(e) shall be added, and the resulting amount shall be paid to producers (for their total delivered bases). The pounds of milk delivered by producers in excess of their delivered bases, and determined under this subparagraph shall be paid in accordance with the provisions contained in subparagraph (5) of this section.

(3) Provided, That there shall be subtracted from the figure computed pursuant to subparagraphs (1) or (2) of this section, as the case may be, not less than 4 cents nor more than 5 cents per hundred pounds on all milk received from producers for the purpose of retaining in the producer-settlement fund a cash balance to provide against errors in reports and payments, or delinquencies in payments by handlers.

(4) The result of the calculations pursuant to subparagraphs (1) or (2) and (3) of this section shall be known as the uniform price for such delivery period for base milk (or a percentage of base milk) of producers containing 4 percent butterfat.

(5) The price for surplus milk, when computed under subparagraph(1) of this section, shall be equal to the Class II price, and the price for surplus milk, when computed under subparagraph (2) of this section, shall be a price determined as follows:

Multiply the pounds of Class I milk in excess of the total delivered bases of producers by the applicable Class I price; multiply the pounds of Class II milk by the applicable Class II price; then add into one sum the respective values and divide the resulting amount by the sum of the pounds of Class I in excess of the delivered bases of producers and the pounds of Class II milk; the result obtained shall be the price to be paid for surplus milk for such delivery period.

(6) On or before the 10th day after the end of each delivery period the market administrator shall notify each handler and publicly announce the uniform price per hundred pounds of base milk ( or a percentage of base milk) of the surplus price and the butterfat differential provided by Sec. 9(f).

Sec. 8 Base ratings. (a) Determination of base. For each delivery period the base of each producer shall be a quantity of milk calculated by the market administrator in the following manner: multiply the applicable figure computed pursuant to paragraph (b) of this section adjusted by paragraph (c) of this section by the number of days during such delivery period on which milk was received from such producer.

(b) Determination of daily base. (1) For delivery periods from the effective date hereof to and including December 31, 1942, the daily base of each producer shall be computed by the market administrator from reports submitted by the handlers pursuant to Sec. 5 or from the best information available in the following manner:

(i) For the first delivery period next following the effective date of this order, the aggregate of the daily bases recognized by each handler for the respective producers in accordance with the customary payment plan of such handler with respect to each producer shall be compared with the daily average Class I sales of the handler during such delivery period and the recognized daily base of each producer shall be adjusted by multiplying his recognized daily base by the percentage which the daily Class I sales of the handler bears to the total recognized daily bases of his producers.

(ii) If the customary plan of payment to producers by any handler does not provide for payments based upon recognized daily bases for producers, a daily base for each producer shall be determined by multiplying the daily average pounds of each producer's milk delivered, during the first delivery period next following the effective date of this order, by the percentage which the daily average Class I sales of the handler during such delivery period bear to his total daily average receipts from producers.

(2) Effective for the delivery periods for each calendar year beginning January 1, 1943, the daily base of each producer shall be computed by the market administrator from reports submitted by the handlers pursuant to Sec. 5 in the following manner:

(i) Determine from reports filed pursuant to Sec. 5 by handlers, who purchased or received milk from producers, the three delivery periods in the immediate preceding calendar year for which the sales of Class I milk were nearest the total receipts of milk from producers. Such delivery periods shall be known as the base period;

(ii) Determine for each producer who was regularly delivering milk to a handler on the first day of December of the immediately preceding calendar year, the average daily deliveries of milk to such handler during the base period;

(iii) Add together in one sum all the daily average amounts computed pursuant to subdivision (ii) of this subparagraph;

(iv) Determine from reports filed pursuant to Sec. 5 by handlers, who purchased or received milk from producers, the average daily Class I milk received from such producers during the base period;

(v) Divide the amount determined pursuant to subdivision (iv) of this paragraph by the sum determined pursuant to subdivision (iii) of this subparagraph; and

(vi) Multiply the daily average amount for each producer determined in subdivision (ii) of this paragraph by the percentage figure computed pursuant to subdivision (v) of this subparagraph. This result shall be known as the producer's daily base for the next succeeding calendar year.

(3) In case a producer is prevented by an applicable health authority, through quarantine or degrading, from delivering milk, and such producer furnishes a written statement to that effect from such applicable health authority to the market administrator, the market administrator shall deduct the number of days (but not more than 30 days in any one base period) involved by such ruling of the applicable health authority from the figure representing the number of days in the base period in the determination of such producer's daily base.

(4) In case a producer, as the result of official testing for tuberculosis or Bang's disease or testing for mastitis by a recognized veterinarian, loses 20 percent or more of the cows in his herd and furnishes the market administrator with satisfactory documentary evidence of such loss, such producer shall be permitted 3 months in which to replace such cows lost through such testing and the market administrator shall credit such producer with the delivery of his established base in the determination of such producer's daily base.

(5) In case a handler who distributes within the marketing area milk of his own production disposes of all or a part of his delivery routes to a handler who purchases or receives milk from producers and who becomes a producer, the daily base of such producer shall be computed by the market administrator in the following manner: determine the average daily Class I milk produced and disposed of, during the three months next preceding the date of the disposal of such delivery routes, on such delivery routes of such handler, which purchasing and selling handler jointly report as involved in the deal, subject to verification by the market administrator. This figure shall be known as the producer's daily base and shall be effective from the date of the first delivery of milk of his own production in bulk to a handler by such producer through the remaining calendar year and thereafter shall be superseded by a daily base determined pursuant to subparagraph (2) of this paragraph.

(c) Base rules. (1) Any producer who ceases to deliver milk to a handler for a period of more than 30 consecutive days shall forfeit his base.

(2) In case a producer sells or delivers to a handler milk not of his own production as being milk of his own production, the base of such producer shall be forfeited at the beginning of the delivery period during which such milk was delivered and all milk sold or delivered to a handler by such producer during such delivery period shall be considered as excess over base.

(3) If, on or before the 5th day after the transfer of a herd producing base milk, there is recorded with the market administrator an affidavit stating that such herd has been transferred listing the ear tag numbers of the animals so transferred and specifying the date

of such transfer, signed jointly before a notary public by the seller and the purchaser of such herd and if, within 10 days after such affidavit is recorded with the market administrator, no written protest containing information that such transfer was contrary to the terms of this subparagraph is filed with the market administrator, the base of such producer may be transferred but only as one unit to the purchaser of such herd; if, upon investigation, the market administrator finds the terms of this subparagraph have been violated, the base of such producer shall be forfeited. No base, once transferred, shall be again transferred within 6 months of the date of the prior transfer except in case of the death of a producer.

(4) A landlord who rents on a crop-share basis shall be entitled to the entire daily base to the exclusion of the tenant if the landlord owns the entire herd. Likewise, the tenant who rents on a crop-share basis shall be entitled to the entire daily base to the exclusion of the landlord if the tenant owns the entire herd. If the cattle are jointly owned by tenant and landlord, the daily base shall be divided between the joint owners according to the ownership of the cattle, if and when such joint owners terminate the tenant and landlord relationship.

(5) A producer, whether landlord or tenant of a farm, may retain his base when moving his entire herd of cows from one farm to another farm: Provided, That, at the beginning of a tenant and landlord relationship, the allotted base of each tenant and landlord shall be a combined base and may be divided only if such relationship is terminated.

Sec. 9 Payments for milk. (a) Time and method of payment. On or before the 12th day after the end of each delivery period, each handler shall make payment, after deducting the amount of the payment made pursuant to paragraph (g) of this section, for not less than the total value of milk of producers received by each handler during such delivery period, subject to the butterfat differential set forth in paragraph (f) of this section and the minimum prices as follows:

(1) To producers at a uniform price per hundred pounds computed pursuant to Sec. 7(b)(1) or 7(b)(2), as the case may be, and subject to the provisions of Sec. 7(b)(3), for that quantity of milk received from producers not in excess of their respective delivered bases, or percentage of bases, as the case may be;

(2) To producers for that quantity of milk received in excess of their respective delivered bases, if computed in accordance with Sec. 7(b)(1), at the Class II price, as provided in Sec. 4; or

To producers for that quantity of milk received in excess of their respective delivered bases, and disposed of as Class I milk, and for that quantity of milk disposed of as Class II milk, if computed in accordance with Sec. 7(b)(2), at a blend of the Class I and Class II prices provided in Sec. 4 and computed in accordance with Sec. 7(b)(5); and

(3) Any handler may make payments to producers in addition to the minimum payments required by this paragraph provided that such additional payments are made to all producers supplying such handler with milk of the same quality and grade.

(b) Producer-settlement fund. The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to paragraphs (c) and (e) of this section, and out of which he shall make all payments to handlers pursuant to paragraphs (d) and (e) of this section.

(c) Payments to the producer-settlement fund. On or before the 12th day after the end of each delivery period, each handler shall pay to the market administrator for payment to producers through the producer-settlement fund the amount by which the total utilization value of the milk of producers received by such handlers during the delivery period is greater than the sum obtained by multiplying the pounds of such milk of producers by the appropriate prices required to be paid producers by handlers pursuant to subparagraphs (1) and (2) of paragraph (a) of this section and adding together the resulting amounts.

(d) Payments out of the producer-settlement fund. On or before the 15th day after the end of each delivery period, the market administrator shall pay to each handler, for payments to producers, the amount, if any, by which the total utilization value of the milk received from producers by such handler during the delivery period is less than the sum obtained by multiplying the hundred pounds of such milk of producers by the appropriate prices required to be paid producers by handlers pursuant to subparagraphs (1) and (2) of paragraph (a) of this section, and adding together the resulting amounts. If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this paragraph, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available. No handler who, on the 15th day after the end of each delivery period, has not received the balance of such reduced payment due him from the market administrator shall be deemed to be in violation of paragraph (a) of this section if he reduces his payments to producers by not more than the amount of the reduction in payment from the producer-settlement fund.

(e) Adjustments of errors in payments. Whenever verification by the market administrator of reports or payments of any handler discloses errors made in payments to the producer-settlement fund pursuant to paragraph (c) of this section, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 5 days, make payment to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler pursuant to paragraph (d) of this section, the market administrator shall, within 5 days, make such payment to such handler. Whenever verification by the market administrator of the payment by a handler to any producer for

milk received by such handler discloses payment of less than is required by this section, the handler shall make up such payment not later than the time of making payment to producers next following such disclosure.

(f) Butterfat differential. In making payments to each producer, pursuant to paragraph (a) of this section, each handler shall add to the uniform price per hundred pounds not less than, or subtract from the uniform price per hundred pounds not more than, as the case may be, for each one-tenth of 1 percent of butterfat content, which is above or below 4.0 percent in milk received from such producer, the amount as shown in the schedule below for the butter price range in which falls the average wholesale price of 92-score butter in the Chicago market, as reported by the United States Department of Agriculture, for the delivery period during which such milk was received.

<u>Butter price range</u>	<u>Butterfat differential</u>
17.50 - 22.499 per lb.	2.5¢ per one-tenth of 1 percent
22.50 - 27.499 "	3.0 " " " " "
27.50 - 32.499 "	3.5 " " " " "
32.50 - 37.499 "	4.0 " " " " "
37.50 - 42.499 "	4.5 " " " " "
42.50 - 47.499 "	5.0 " " " " "
47.50 - 52.499 "	5.5 " " " " "
52.50 - 57.499 "	6.0 " " " " "
57.50 - 62.499 "	6.5 " " " " "

(g) Half-delivery period payments. On or before the 25th day of each delivery period, each handler shall make payment to each producer for the approximate value of the milk of such producer which, during the first 15 days of such delivery period, was received by such handler.

Sec. 10. Marketing services. (a) Deductions for marketing services. Except as set forth in paragraph (b) of this section, each handler shall deduct 5 cents per hundred pounds from the payments made to each producer pursuant to Sec. 9, with respect to all milk received by such handler from producers during each delivery period, and shall pay such deductions to the market administrator on or before the 12th day after the end of such delivery period. Such moneys shall be expended by the market administrator for verification of weights, sampling, and testing of milk received by handlers from producers during the delivery period and to provide such producers with market information, such services to be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

(b) Producers' cooperative association. In the case of producers for whom a cooperative association, which the Secretary determines to be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act," is actually performing, as determined by the Secretary, the services set forth in paragraph (a) of

this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions from the payments to be made directly to such producers pursuant to Sec. 9, as are authorized by such producers, and, on or before the 12th day after the end of each delivery period, pay over such deductions to the association rendering such services.

Sec. 11 Expense of administration. (a) Payments by handlers. As his prorata share of the expense of the administration hereof, each handler, on or before the 12th day after the end of each delivery period, shall pay to the market administrator, with respect to all milk received by him from producers or produced by him, during such delivery period, an amount not exceeding 3 cents per hundredweight, the exact amount to be determined by the market administrator, subject to review by the Secretary. Each cooperative association which is a handler shall pay such prorata share of expense on only that milk of producers caused to be delivered by it to the plants from which no milk is disposed of in the marketing area.

(b) Suits by market administrator. The market administrator may maintain a suit in his own name against any handler for the collection of such handler's prorata share of expense set forth in this section.

(The following provisions would apply only to the proposed marketing agreement.)

Sec. 12 Effective time, suspension, and termination. (a) Effective time. The provisions hereof, or any amendment hereto, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated, pursuant to paragraph (b) of this section.

(b) Suspension and termination. Any or all provisions hereof, or any amendment hereto, shall be suspended or terminated as to any or all handlers after such reasonable notice as the Secretary may give, and shall, in any event, terminate whenever the provisions of the act authorizing it cease to be in effect.

(c) Continuing power and duty. If, upon the suspension or termination of any or all provisions hereof, there are any obligations arising hereunder the final accrual or ascertainment of which requires further acts by any handlers, by the market administrator, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination: Provided, That any such acts required to be performed by the market administrator shall, if the Secretary so directs, be performed by such other person, persons, or agency as the Secretary may designate.

The market administrator, or such other person as the Secretary may designate (1) shall continue in such capacity until discharged by the Secretary; (2) from time to time account for all receipts and disbursements and deliver all funds or property on hand, together with the books

and records of the market administrator, or such person, to such person as the Secretary shall direct; and (5) if so directed by the Secretary execute such assignments or other instruments necessary or appropriate to vest in such person full title to all funds, property, and claims vested in the market administrator or such person pursuant hereto.

(d) Liquidation after suspension or termination. Upon the suspension or termination of any or all provisions hereof, the market administrator, or such person as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office and dispose of all funds and property then in his possession or under his control, together with claims for any funds which are unpaid and owing at the time of such suspension or termination. Any funds collected pursuant to the provisions hereof, over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the market administrator or such person in liquidating and distributing such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

Sec. 13 Liability. (a) Liability of handlers. The liability of the handlers hereunder is several and not joint, and no handler shall be liable for the default of any other handler.

Sec. 14 Counterparts and additional parties. (a) Counterparts of marketing agreement. This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary all such counterparts shall constitute, when taken together, one and the same instrument, as if all such signatures were obtained in one original.

(b) Additional parties to marketing agreement. After this agreement first takes effect, any handler may become a party to this agreement if a counterpart thereof is executed by him and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary, and the benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party.

Copies of the proposed marketing agreement and order may be procured from the Hearing Clerk, Office of the Solicitor, United States Department of Agriculture, in Room 0312 South Building, Washington, D. C., or may be there inspected.

Dated: May 27

Washington, D. C.

/s/ Thomas J. Flaven  
Assistant to the Secretary of Agriculture  
Acting pursuant to authority delegated by  
the Secretary of Agriculture under the Act  
of April 4, 1940 (54 Stat. 81; 7 FR 2656).

